

SALES AND USE TAX PUBLIC PARTICIPATION WORKING GROUP

Teleconference Minutes

of

Phase II Task Force Four

held **February 9, 1998**, 11:00 am to 12:30pm

I. Welcome and Introductions.

Identified teleconference participants:

Jennifer Hays (KY) (Facilitator)	Paull Mines (MTC)
René Blocker (MTC)	Joe Randall (ID)
Bill Brady	Art Rosen
Merle Buff	Hattie Stancil (DC)
Jeff Friedman	Marshall Stranburg (FL)
Latisha Johnson(MN)	Cass Vickers
William Lunka (MN)	Mark Wainwright (UT)

II. Public Comment Period.

Paull Mines reminded the group that participants had been asked to provide specific written proposals for the items sought to be included in the Phase II document. He indicated that more productive discussions may be held on specific proposals.

There was no other public comment.

III. Phase II Task Force Four evaluation/consideration of proposed topics.

- a. Advance ruling procedure *Description:* Establishment of an advance rulings procedure designed to answer taxpayer's nexus questions in situations where a State's adopted nexus approach (including its adoption of Phase I or II document components) does not provide a clear answer to the out-of-state business concerning its sales/use tax obligations. The procedure could do a number of things, including: (1) timely grant determinations regarding nexus upon review of a particular scenario; and (2) inform an in-state vendor as to whether its provision of goods and services to an out-of-state business would create nexus or not for its out-of-state business customers (*i.e.*, the wholesaler would secure the nexus determination on behalf of a class of retailers).

Jennifer Hays (facilitator) led the discussion. A State participant indicated that his/her State's ruling procedure allows for both

anonymous rulings and rulings to identified taxpayers. In response to an inquiry regarding the binding effect of anonymous rulings, it was noted that the State will accept an anonymous ruling as binding if the facts presented are the same as those originally set forth in the ruling. Others observed that some States do not issue anonymous rulings.

One participant pointed out that there are at least two interpretations of this possible Phase II topic: one under which a ruling is requested prior to commencement of in-state activities and one under which immunity is sought from the assertion that certain activity creates nexus.

Business representative would like to see the States adopt some kind of procedure, *e.g.*, voluntary disclosure proceedings, that would apply nexus rulings prospectively in cases where there is reasonable confusion over whether the taxpayer has nexus in the State. For example, if a taxpayer requests a ruling within 12 months of its ambiguous activity, the voluntary disclosure proceeding would allow the taxpayer to commence compliance on a forward-looking basis only. States indicated that they could consider granting prospective-only treatment on a case-by-case basis, but could not agree to a standard by which prospective treatment would be always allowed, given the idiosyncratic nature of each case.

Businesses would like States to provide at least some public notice of the criteria States apply in granting prospective only treatment in ambiguous nexus circumstances. Additionally, businesses are looking for uniform advance ruling procedures among the States.

To address the retroactivity issue, it was suggested that one solution may be to allow voluntary disclosures to be converted into forward-looking advance rulings, a solution that seemed to be acceptable to some business representatives. Also, this suggested solution could address the question of anonymous rulings by allowing for anonymous voluntary disclosures that can be converted into rulings that identify the taxpayer once the dust begins to settle in understanding what the facts are. An alternative procedure is for the States to issue non-binding anonymous letter rulings.

A State representative indicated two different situations under which a nexus ruling could be requested: 1) the activity is taking place in the State and the taxpayer seeks a ruling or, more appropriately, resolution of its circumstances through a voluntary disclosure; and 2) the taxpayer is looking to begin activity in the State, does not need voluntary disclosure procedure and can go directly to the advance ruling procedure. Ruling requests typically result in the State asking the taxpayer when it first started doing business in the State. It was pointed out that a business always has the option of

registering with a State (without going through a voluntary disclosure) and complying with the taxing provisions from that point forward, although there is a risk of audit for past activities. In response, business noted that registering without dealing with the potential past liability issue does not work to encourage tax collection and payment by taxpayers who may well prevail in litigation on the nexus issue. Part of the solution may be for States to forego looking backwards. Both sides give up something. It was suggested that Florida's procedures offer a helpful process, although Florida will not rule anonymously.

One problem noted by business representatives was the publication of rulings that identify taxpayers. It was pointed out that tax administrators are obligated to treat taxpayers equitably and thus, should publish rulings to advise everyone. Several States redact the names and other confidential information before publication. As part of this topic, one possible proposal is to encourage all States to redact all published rulings.

Near the end of the teleconference discussion, a suggestion was made for a procedure similar to the ADR process in which advance ruling could be made on a multistate and multi-taxpayer basis. It was noted that the MTC ADR Program is flexible enough to allow for the issuance of letter rulings on a multistate basis.

Participating business representatives are expected to develop a proposal on this topic, however, when the proposal will be completed is not known.

- b. Use tax collection (*Description: A use tax collection agreement, whereby an out-of-state business could agree to provide the customer information required in order for the State to impose and collect its use tax directly from in-state residents in exchange for relief from any assertion of use tax-related liability.*)

One business representative suggested dropping this topic since a similar idea was rejected by a significant number of both business and State representatives during an NTA discussion of the idea. Apparently, privacy concerns and concerns with collection of the use tax from in-state consumers were the main reasons for disfavoring the idea.

It was suggested that providing an option for providing customer lists in lieu of collection may be of some benefit. Also suggested was the issuance by businesses of a 1099-like form for consumer purchases.

In response to an inquiry regarding State experience with obtaining customer lists for use tax collection, it was noted that States must consider

the benefits of expending limited resources trying to collect small amounts from large numbers of people. It was pointed out that purchase information should go to consumers as well as States so that individuals may report their use tax on their income tax returns for those States providing a line for such reporting.

There was acknowledgement of some State interest in this topic but there is significant business reluctance. However, there seemed to be a tentative consensus among the participants that the concept of providing an option to provide the customer lists is worth consideration. Mark Wainwright (UT) agreed to draft an initial proposal on this topic.